THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO. 9510 of 1997

O r d e r:

The present writ petition is filed seeking a writ of Certiorari to modify the award passed by the Labour Court-III, Hyderabad in I.D. No. 36 of 1994 dated 9.9.1996, and for a consequential direction to the second respondent to pay full backwages to the petitioner on the pay scale that is payable to regular Grade-II employees of HMT from 1982 and to grant all attendant benefits.

By the aforesaid award, the Labour Court directed the respondents to reinstate the petitioner with continuity of service, but denied backwages applying the principle of "no work no pay".

The facts in brief, necessary for disposal of the writ petition, are as under:

The petitioner claims that he was engaged as Temporary Librarian in HMT WACO & Education Society on 18.5.1981 on a consolidated monthly wage of Rs.200/-, which was later increased to Rs. 475/- per month. While so, the respondent terminated his services terminated on 10.2.1992. As the persuasions of the petitioner to rejoin him in duty turned futile, he raised an industrial dispute before the Labour Court under Section 2-A(2) of the Industrial Disputes Act, 1947 and the same was registered as I.D. No. 36 of 1994. The respondent contested the I.D. by filing counter affidavit *inter alia* stating that the respondent is a society and not an industry, and as such, the I.D. filed by the petitioner, is not maintainable, and more so when the petitioner is not a "workman" within the meaning of Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Ac'). It is further contended that the petitioner has not worked properly and has not opened the

Reading Room of the Library on 9.2.1992, and when questioned about the same, he returned the keys to the Joint Secretary and left the Library and did not report to duty thereafter.

Before the Labour Court, the petitioner examined himself as W.W.1 and marked documents Ex.W1 to W.17. On the other hand, the management examined M.W.1 and M.W.2 and marked document Ex.M.1.

Pending disposal of the I.D., the Labour Court, vide orders dated 8.4.1994 passed in I.A. No. 35 of 1994, directed reinstatement of the petitioner into service.

The Labour Court, having regard to Ex.W1-appointment order, held that the petitioner is working in a society connected with Hindustan Machine Tools (for short HMT), dealing with the facilities offered to its employees, and HMT being the main employer, the respondent formed part and parcel of HMT, and accordingly treated the petitioner as a workman. The Labour Court further held that for termination of the services, the procedure contemplated under Section 25-F of the Act has to be followed, and the respondent having not followed the said procedure, the termination of the petitioner is illegal, and as such, he is entitled to the relief of reinstatement into service. Holding so, the Labour Court, vide award dated 9.9.1996, impugned in this writ petition, held that petitioner is entitled to reinstatement with continuity of service, but denied backwages for the period from the date of his termination till the date of his reinstatement into service by reason of interim order passed in the I.D.

Before the Labour Court in the I.D. and initially before this Court in the writ petition, the petitioner did not make HMT a party-respondent. However, during the pendency of the writ petition, the petitioner filed an petition in W.P.M.P. No.31609 of 2004 seeking to

implead the HMT, represented by its General Manager, as party-respondent to the writ petition.

The proposed party-respondent/HMT filed counter to the petition in W.P.M.P. No. 31609 of 2004 stating that it is not a necessary party, and that it is passing through severe financial crunch, and that it is not in a position to discharge its various statutory and non-statutory liabilities, due to paucity of funds. It is also stated that the petitioner is not entitled for regularisation of his services in HMT except compensation in lieu of continuation of service consequent upon closure of HMT WACO Educational Society, which was paid to other Administrative Staff and Teachers of HMT WACO Educational Society.

However, considering the averments made by HMT in its counter, this Court by order dated 11.2.2005 allowed the W.P.M.P. No. 31609 of 2004 and impleaded HMT as party-respondent to the present writ petition.

The learned counsel for the petitioner submitted that the petitioner was engaged in the second respondent society, run by HMT Limited, in the year 1981, and since then worked continuously without any complaint

for a meagre consolidated amount of Rs. 475/-, which is far below the Minimum Wages fixed by the Government from time to time. It is also submitted that the petitioner was awarded good conduct certificate twice and that his work was appreciated by one and all. However, despite such appreciation, the second respondent had orally terminated the services of the petitioner on 10.2.1992. Questioning the said illegal termination the petitioner approached the Assistant Commissioner or Labour, Ranga Reddy, and on his advise, he raised an industrial dispute in I.D. No. 36 of 1994. It is stated that in the claim petition, the petitioner has sought for reinstatement with full backwages

and all attendant benefits and continuity of service on a pay scale due for a regular grade employee of H.M.T right from 1982. He also contended that though the main issue raised before the Labour Court is with regard to oral termination, the incidental relief is with regard to regularisation of the employee, and submitted that the Court has ample power to amend and mould the relief.

The learned counsel further contended that the issue of regularisation was also raised before the Labour Court by the petitioner, inasmuch as the petitioner in his affidavit filed before the Labour Court at para 8 submitted that "*the conduct of the management in not regularising his services in all these years, paying him less than minimum wages and denying him the pay scales of grade employee of HMT on whose par, he stand is also quite deplorable and unjust".* He thus contended that though oral termination is the main issue raised by the petitioner before the Labour Court, yet the issue of regularisation of services of the petitioner is an incidental issue, which was not dealt with by the Labour Court, and as such, the petitioner is compelled to file the present writ petition. In support of his contentions, he placed reliance on a judgment of the Apex Court in **Management Hotel Imperial, New Delhi v. Hotel Workers' Union**[1]**.**

The learned counsel for petitioner further contented that for all these years, the petitioner was paid only a paltry amount of Rs.475/- which is less than minimum wages prescribed by the Government from time to time, and that no employer can engage an industrial labour, without paying minimum wages, and sought for direction to the respondent-company to pay minimum wages to the petitioner right from the year 1981 during which he joined the service of the respondent. In support of this submission, he placed reliance on a judgment of Apex Court in **Standard Vacuum Refining Co. of India**

v. Workmen[2] **and Sanjit Roy Vs. State of Rajasthan**[3]**.**

His further contention is that the petitioner is agitating for his rights since 1991 and at this stage after lapse of about 15 years, it is not proper to send the petitioner to any other Court or to remand the matter for further adjudication. It is further stated that a limited company has a public duty and wherever beneficial or welfare legislations are given a go bye, it is the duty of the Court to probe into the matter, and in support of this argument, he placed reliance on a judgment of the Apex Court in **The Workmen Employed in Associated Rubber Industry Ltd, Bhavnagar Vs. The Associated Rubber Industry Limited**[4], wherein, it was held as under:

> "It is the duty of the Court, in every case where ingenuity is expended to avoid taxing and welfare legislations, to get behind the smoke-screen and discover the true state of affairs. The Court is not to be satisfied with form and leave well alone the substance of a transaction".

The further contention of the learned counsel for petitioner is that a private body is governed by the statute and when statute requires it to act in a particular manner, it has no option but to act accordingly, and it cannot act contrary to it on the ground that it is not covered by the definition of "State" defined under Article 12 of the Constitution of India, and in support of this argument, he placed reliance on a judgment of Apex Court in **Raj Soni Vs. Air Officer Incharge Administration and another**[5], wherein it was held:

> The recognised private schools in Delhi whether aided or otherwise are governed by the provisions of the Act and the Rules. The respondent-management is under a statutory obligation to uniformly apply the provisions of the Act and the Rules to the teachers

> employed in the school. When an authority is required to act in a particular manner under a statute it has no option but to follow the statute. The authority cannot defy the statute on the pretext that it is neither a State nor an "authority" under Article 12 of the Constitution of India."

Learned counsel for the petitioner submitted additional material papers containing a note on minimum wages and Government Orders issued in G.O. Ms. No. 82, dated 2.12.2000 revising the minimum wages in the employment in "Marketing Societies, Consumer Cooperative Societies and Cooperative Banks", G.O. Ms. No. 80, dated 2.12.2000 revising the minimum rates of wages in employment in "shops and Commercial Establishments", G.O. Ms. No. 92, dated 22.12.2000, revising the wages with regard to "Construction of Projects including Dams and Multipurpose Projects", G.O. Rt. No. 2401, dated 21.12.2004 for "Soft Drinks and Aerated Water Manufacturing Units". Placing reliance on the said government order, he contended that the petitioner who worked as Librarian has to equated with such of those employees, and the respondents should be treated to treat the petitioner as Grade-II employee of HMT or as an unskilled worker and paid minimum wages of at least Rs.2,182/- as are made applicable and payable for Grade-II category employees as per the minimum wages revised in the year 2000.

Per contra, learned counsel for the respondent contended that the second respondent-HMT Welfare and Cultural Organisation (for short HMT WACO), does not form part and parcel of HMT and the petitioner cannot claim any relief as against HMT as a matter of right. It is further submitted that HMT is not a party before the Labour Court and the petitioner has no right to claim pay scale or regularisation in

HMT. It is alternatively contended that even before the Labour Court, the claim of the petitioner is not with regard to regularisation of his services, and that he has merely sought for his reinstatement into service. It is submitted that most of the employees vacated their quarters, and the society building is also in a dilapidated condition, and the petitioner did not attend to any work, for almost all the families vacated from their quarters. It is also contended that the second respondent society does not have any assets and it became defunct. It is also contended that if the petitioner seeks minimum wages, he has to approach the appropriate Authority under the Payment of Minimum Wages Act, and the same cannot be raised before this Court nor the Court can decide.

He further contended that in terms of the orders of this Court in some matters, the teaching, ministerial staff and attenders' services were terminated by paying 18 months salary, and the petitioner, whose very appointment is in dispute, cannot seek more benefits than those offered and paid to regular employees at the time of their termination.

Placing reliance upon the judgment of Apex Court in **Secretary, State of Karnataka and others Vs. Uma Devi and others** (Appeal – Civil 3595-3612 of 1999), the learned counsel for the respondent contended that the relief of regularisation cannot be granted by this Court, and for such relief, the petitioner has to approach the competent Labour Court and seek regularisation.

Heard the learned counsel for petitioner, learned Government Pleader of Labour and learned counsel for respondent No.3 at length and perused the material on record.

The award passed by the Tribunal in I.D. No. 36, dated 9.9.1996, which is the subject-matter of this writ petition, was earlier questioned by the second respondent by filing writ petition in W.P. No. 5937 of

1997 raising similar contentions as raised in the present writ petition, and this Court by order dated 3.7.2003 dismissed the said writ petition confirming the award of the Labour Court, *inter alia* holding as under:

> "Learned counsel for the petitioner has not raised any question of law as to jurisdiction, perversity of findings of the Labour Court or Section 25 F of the Act. The Labour Court after perusing the entire evidence on record rightly held that the petitioner-association is a part and parcel of HMT industry, the 2nd respondent herein is a workman and he was illegally removed. This finding of fact, which was based on evidence, cannot be interfered with by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. The Award passed by the Labour Court does not suffer from any illegality and irregularity and odes not deserve interference in the hands of this Court.
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> The writ petitioner fails and is accordingly dismissed. No order as to costs.

During the pendency of this writ petition, the H.M.T. Teachers Welfare Sangh filed two writ petitions one in W.P. No. 2703 of 1999 questioning the proposal to close down HMT High School and the second in W.P. No. 12626 of 1999 seeking a direction to the respondents to reopen the said school. A learned Judge of this Court, by common order dated 25.11.1999 disposed of the said writ petitions with the following directions:

> "Accordingly, the impugned order is set aside and the 4th respondent is directed to consider the application afresh, of course, after giving opportunity to the petitioner society also. While considering the petition submitted by the 2nd respondent, the 4th respondent can also consider the necessity and feasibility of taking over the institution by the Government, as provided under the provisions of the Act. The 4th respondent is also directed to consider the claim of the petitioner-society, if it comes to run the institution on its own."

Alleging non-implementation of the above orders, a contempt case in C.C. No. 1745 of 1999 was filed, and this Court disbelieved the version of the management that HMT had nothing do with HMT WACO, and observed as under:

> "Contemnors having appeared in the court and filed their counter, contended that the Management of H.M.T. has nothing to do with the school as the same is being run by the H.M.T. Welfare and Cultural Organisation and as such it need not pay the salaries to the petitioners and it is open to them to workout the remedies against the organisation, forgetting the fact that the Executive Director of the Company is the Ex-Officio Chairman of the Organization and the cost of construction and expenses incurred for acquiring infrastructure was fully met from the funds of the company. That apart every pie that was payable to the teaching staff and supporting staff is being paid by the company."

Ultimately, the management agreed to pay 18 months salary to the employees on closure of the school, and accordingly, recording the said submission, this Court closed the contempt case.

In terms of the award of the Labour Court, the petitioner was declared as an workman and the second respondent society is part and parcel of the main industry-HMT and held that the petitioner is entitled for reinstatement with salary and also increments, if any, with continuity of service. The said order attained finality when a learned Judge of this Court dismissed the writ petition filed by the second respondent assailing the same.

The operative portion of the award passed by the Labour Court reads as under:

> "In the result, the petition is allowed. Passing the "Award" stating that the petitioner is entitled for reinstatement and he was actually reinstated into service as per the orders in I.A. No. 35 of 1994 dated 8.4.1994 of this Court. He is entitled to the salary and

> also the increments if any and the continuity of service. But as the petitioner has not worked from the date of termination till the date of reinstatement as per the interim orders of this Court, he is not entitled for those backwages by applying the principle of "no work no pay". There is no need to give any time for implementation of Award in this order as the petitioner was already employed."

Inasmuch as, as stated above, the award of the Labour Court attained finality, the findings given by the Labour Court cannot be interfered, and as such, the respondent can neither be allowed to raise similar contentions nor can this Court, go into the same.

Since the award of the Labour Court, had already attained finality, the points that fall for consideration in the present writ petition are those, which were not raised and adjudicated before the Labour Court or in the writ petition filed by the second respondent, namely those relating to regularisation of the petitioner and payment of minimum wages.

It is settled law, that when the issues are raised and not adjudicated by the Labour Court, then the only alternative for the writ Court is to remand the matter to the Labour Court for adjudication of the said issues. But in the present case, remanding the matter would not serve any purpose inasmuch as the HMT industry itself is closed and there is no scope of taking the petitioner into service. It is also to be noted that the petitioner is being paid less wages than the minimum wages, prescribed under the Minimum Wages Act. The petitioner apart from maintaining himself, has to maintain his family, and with his meagre salary, he has been fighting the litigation for the last so many years, and at this distance of time, i.e. after lapse of nearly 16 years, I am of the considered opinion that it would not be proper to remand the matter to Labour Court.

The petitioner, admittedly, was appointed as "temporary Librarian" in the year 1981 and is being paid only Rs.475/- which is far below the minimum wages prescribed under the Minimum Wages Act, and with that meagre salary, he has been agitating his grievance since 1991. The Labour Court held that petitioner has to be treated as workman connected with HMT and passed an award holding that he is entitled to reinstatement with continuity of service and also held that he is entitled to salary and increments if any. The said award was confirmed by this Court by order dated 3.7.2003 in W.P. No. 5937 of 1997 and the same also attained finality, as no further appeal was preferred against the same. The HMT, which was held as the main employer of the petitioner, has itself been closed down, and is not operating as on date. There are neither any funds nor any assets in the name society-second respondent. The HMT being the main employer and creator of the second respondent society, is under an obligation to discharge the liability for the service utilised by the second respondent society. The employees of the school run by HMT, it is stated were paid 18 months salary *in lieu of* closure of the school, and the second respondent cannot compare the case of the petitioner with that of the teachers working in the school and say that the petitioner cannot claim more benefits that what they were paid, for the reason that the petitioner was being paid only a meagre consolidated amount of Rs.475/- per month, which is less than the minimum wages, prescribed under the Minimum Wages Act, and whereas the employees who were paid 18 months wages in lieu of closure of the school, were paid regular wages.

The petitioner, in the note submitted by him, admitted that though the category of "Librarians" have been notified as scheduled employment by the Central and the State Governments, no minimum

wages were prescribed for the said category of employment right from 1982 to till date. In the absence of any material placed to show that so and so amount was prescribed as the minimum wages for Librarians under the Minimum Wages Act, the petitioner cannot equate himself on par with Grade II employees and claim that he should be granted the minimum wages ranging from Rs.2,000/- to Rs.3000/- per month. But certainly, the petitioner should be given some minimum wages, for he has been working as Librarian on a paltry sum of Rs. 475/- per month.

In **Standard Vacuum Refining Co. of India v. Workmen**[6] **and Sanjit Roy Vs.State of Rajasthan,** upon which the learned counsel for the petitioner placed heavy reliance, the apex Court emphasized the need to pay minimum wages, and held as under:

> "It is because of this socio-economic aspect of the wage structure that industrial adjudication postulates that no employer can engage industrial labour unless he pays it what may be regarded as the minimum basic wage. If he cannot pay such a wage he has no right to engage labour, and no justification for carrying on his industry; in other words, the employment of sweated labour which would be easily available to the employer in all undeveloped and even under-developed countries is ruled out on the ground that the principle of supply and demand has lost its validity in the matter of employment of human labour, and that it is the duty of the society and the welfare State to assure to every workman engaged in industrial operations the payment of what in the context of the times appears to be the basic minimum wage. This position is now universally recognised."

The apex court, in its judgment referred to its earlier judgment in **Sanjit Roy,** which dealt with the issued of payment of minimum wages to the workmen, and wherein it was held:

> If this be the correct position in law, it is difficult to see how the constitutional validity of the Exemption Act in so far as it excludes the applicability of the Minimum Wages Act, 1948 to the workmen employed

in famine relief works can be sustained. Article 23, as pointed out above, mandates that no person shall be required or permitted to provide labour or service to another on payment of anything less than the minimum wage and if the Exemption Act, by excluding the applicability of the Minimum Wages Act 1948, provides that minimum wage may not be paid to a workman employed in any famine relief work, it would be clearly violative of Article 23…

… The presumption therefore must be that the work undertaken by the State by way of famine relief is useful to the society and, productive in terms of creation of some asset or wealth and when the State exacts labour or service from the affected persons for carrying out such work, for example, a bridge or a road, which has utility for the society and which is going to augment the wealth of the State, there can be no justification for the State not to pay the minimum wage to the affected persons.

... The State cannot be permitted to take advantage of the helpless condition of the affected persons and exact labour or service from them on payment of less than the minimum wage. No work of utility and value can be allowed to be constructed on the blood and sweat of persons who are reduced to a state of helplessness on account of drought and scarcity conditions.

... Whenever any labour or service is taken by the State from any person, whether he be affected by drought and scarcity conditions or not, the State must pay, at the least minimum wage to such person on pain of violation of Article 23 and the Exemption Act in so far as it excludes the applicability of the Minimum Wages Act, 1948 to workmen employed on famine relief work and permits payment of less than the minimum wage to such workmen, must be held to be invalid as offending the provisions of Article 23. The Exemption Act cannot in the circumstances be relied upon by the respondent as exempting it from the liability to pay minimum wage to the workmen engaged in the construction work of Madanganj Harman Road.

Keeping in view the socio-economic aspect and the cost of

living, and having regard to the peculiar facts and circumstances of the case, particularly the fact that no useful purpose would be served either by remanding the matter to the Labour Court or by directing the second and third respondents to take the petitioner into service, in view of the fact that the main employer itself has been closed, and there are no assets or funds in the name of the second respondent society, this Court deems it appropriate, instead of fixing the minimum wages, and computing the salary of the petitioner, it would be just and reasonable to pay lump sum amount to the petitioner *in lieu of* minimum wages at least from the day the award was passed by the Labour Court, which already attained finality.

What would be the said reasonable lump sum amount, which the petitioner would be entitled is the next question that falls for determination.

The appointment letter indicates appointment of the petitioner as Temporary Librarian on consolidated pay of Rs. 200/- and in the affidavit in support of the writ petition it is stated the petitioner is being paid an amount of Rs. 475/-. It is not possible for this Court to calculate or assess the minimum wages for different spells, and it is also not clear as to on what date the consolidated amount was enhanced from Rs.200/- to that of Rs.475/-. So without going into the said arithmetical calculations, keeping in view the overall facts and circumstances of the case, particularly the fact that the petitioner has been working since 1981 and till date, he is being paid only a monthly salary of Rs.475/- per month, and having regard to the fact that HMT, the main employer has itself been closed down and there are no assets and monies standing in the name of the company, I deem it appropriate to direct the second and third respondents to pay a sum of Rs.2,00,000/- to the petitioner in lieu of reinstatement and minimum

wages.

Accordingly, the writ petition is disposed of directing the second and third respondents to pay a sum of Rs.2,00,000/- to the petitioner in lieu of reinstatement and minimum wages. No costs.

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N.V. RAMANA, J.

Dated:20. 12.2006.
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[1] AIR 1959 SC -1342

[2] AIR 1961 SC PAGE 895

[3] AIR 1983 SC 328

[4] AIR 1986 SC 1

[5] 1990 (3) SCC 261

[6] AIR 1961 SC PAGE 895